(2)

No. 05-1315

JUN 14 2006

IN THE

Supreme Court of the United States

GROSSHANDELS-UND LAGEREIBERUFSGENOSSENSCHAFT, BERUFSGENOSSENSCHAFT DER CHEMISCHEN INDUSTRIE, BUNDESVERSICHERUNGSANSTALT FÜR ANGESTELLTE, and VERWALTUNGSBERUFSGENOSSENSCHAFT,

Petitioners,

v.

WORLD TRADE CENTER PROPERTIES, LLC, UNITED AIRLINES, INC., AMR CORP., AMERICAN AIRLINES, INC., also known as American Eagle, GLOBE AVIATION SERVICES, INC., HUNTLEIGH USA CORPORATION, BOEING COMPANY, ARGENBRIGHT SECURITY INC., BURNS INTERNATIONAL SECURITY SERVICES CORP., BURNS INTERNATIONAL SERVICES CORP., GLOBE AIRPORT SECURITY SERVICES, INC., UAL CORPORATION, and ICTS INTERNATIONAL NV,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT WORLD TRADE CENTER PROPERTIES LLC

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

Should German law override the provisions and undermine the purposes of the Air Transportation Safety and System Stabilization Act protecting entities with a property interest in the World Trade Center from all lawsuits arising out of the death of a September 11th victim when the personal representative of that victim applied for and received an award from the Victim Compensation Fund?

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Respondent, World Trade Center Properties LLC, has no parent corporation and no publicly held company has an ownership interest of 10% or more in Respondent.

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ADDITIONAL STATUTORY PROVISION INVOLVED

49 U.S.C. § 40101, Title IV, Air Transportation Safety and System Stabilization Act.

Sec. 408 Limitation on Liability

(a) In General. —

(1) Liability Limited to Insurance Coverage.— Notwithstanding any other provision of law, liability for all claims, whether for compensatory or punitive damages or for contribution or indemnity, arising from the terrorist-related aircraft crashes of September 11, 2001, against an air carrier, aircraft manufacturer, airport sponsor, or person with a property interest in the World Trade Center, on September 11, 2001, whether fee simple, leasehold or easement, direct or indirect, or their directors, officers, employees, or agents, shall not be in an amount greater than the limits of liability insurance coverage maintained by that air carrier, aircraft manufacturer, airport sponsor, or person.

COUNTER-STATEMENT OF THE CASE

Respondent World Trade Center Properties LLC ("WTCP") submits this Brief in opposition to the Petition of Grosshandels- und Lagereiberufsgenossenschaft, Berufsgenossenschaft der Chemischen Industrie, Bundesversicherungsanstalt für Angestellte, and Verwaltungsberufsgenossenschaft (together, "GSIs") for a writ of certiorari. Petitioners seek review of the Opinion of the United States Court of Appeals for the Second

Circuit (A. 1a-9a) affirming the Judgment of the United States District Court for the Southern District of New York (Alvin K. Hellerstein, J.) (A. 10a.-25a) that granted Respondent's motion for summary judgment dismissing the GSIs' complaints.[1]

In July 2001, WTCP, through wholly-owned indirect subsidiaries, acquired the leasehold interests in four commercial buildings located at the World Trade Center. All of those buildings were destroyed in the terrorist-related aircraft crashes of September 11, 2001. WTCP's only connection to the events of September 11, 2001, and to the litigation brought by the GSIs, is its leasehold interests in the World Trade Center.

Petitioners are German Social Insurers, quasi-governmental entities insuring workers under German social welfare law. This case arises out of the deaths of six of Petitioners' insureds, German nationals who were killed in New York and Pennsylvania as a result of the September 11th attacks ("insureds" or "decedents"). The GSIs paid social insurance benefits to the family members of their insureds as required by German law (the "insurance payments"), then sued WTCP and others to recover those sums.

Shortly after September 11, 2001, Congress established the September 11th Victim Compensation Fund ("VCF" or "Fund"). Air Transportation Safety and System Stabilization Act, Pub. L. No. 107-42, 115 Stat. 230 (Sept. 22, 2001), as amended by the Aviation and Transportation Security Act, Pub. L. No. 107-71, 115 Stat. 597 (Nov. 19, 2001) (together,

1. References to "A. __" are to pages of the Appendix to the Petition for a writ of certiorari.

the "Stabilization Act").[2] Under that compensation system, victims of the September 11th attacks and their families were given a choice: They could either submit a claim to the VCF for the injury or death of a victim or they could pursue traditional litigation. Claimants could not pursue both options. When one submitted a claim to the VCF, he or she signed a form waiving the right to file a civil action (or be a party to an action) in any federal or state court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001. *See* Stabilization Act § 405(c)(3)(B)(i).

The waiver of the right to file a civil action did not apply to collateral source obligations, such as insurance. Stabilization Act § 405(c)(3)(B)(i). Thus, in addition to receiving a VCF award, claimants were free to pursue insurance benefits resulting from a September 11th victim's death. In calculating the net amount of an award, the VCF reduced or offset the award by collateral source compensation that a claimant received or was entitled to receive, including insurance benefits. Stabilization Act § 405(b)(6). Such insurance benefits were offset without regard to whether they were paid by insurers located in the United States or abroad.

Prior to the commencement of the GSIs' lawsuits, each German insured's personal representative applied for, and later received, a compensation award from the VCF for that insured's death. The family members of the decedents also received insurance payments from the GSIs, for which the

2. The Stabilization Act was subsequently amended on January 23, 2002 (Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, § 114(a). 115 Stat. 2427, 2435 (2002)) and on November 25, 2002 (Homeland Security Act of 2002, Pub. L. No., 107-296, § 890, 116 Stat. 2135, 2251).

VCF made offsets from its awards. Nonetheless, the GSIs sued under Stabilization Act § 408(b)(1), asserting wrongful death and negligence claims based on the deaths of their insureds. The GSIs contended that German law authorized them to seek recovery of the insurance payments and that neither the Stabilization Act nor the VCF awards precluded their claims.[3]

The District Court dismissed the GSIs' lawsuits because the Petitioners' claims were inconsistent with the purposes of the Stabilization Act and the legal effect of the VCF awards.

The Court of Appeals affirmed the Judgment of the District Court, holding that, pursuant to Stabilization Act § 408(b)(2), the substantive law for decision governing the GSIs' claims was to be determined by the choice of law principles of the states in which the aircraft crashes occurred (New York and Pennsylvania). Applying traditional choice of law analyses, the Court of Appeals held that the GSIs were not authorized to bring their wrongful death and negligence claims under New York law or under Pennsylvania law. As it had done in previous decisions involving claims arising out of the September 11th terrorist attacks, the Court of Appeals also ruled that the GSIs were precluded from bringing their lawsuits because VCF awards resulted in "finality of liability exposure" for entities like Respondent and others protected by the Stabilization Act. A. 9a.

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3. Petitioners' interpretation of German law is incorrect because under German law, Petitioners were statutory subrogees and stood in the shoes of their insureds. Once the VCF issued its awards, Petitioners' subrogation rights were extinguished. Brief for Defendant-Appellee World Trade Center Properties LLC, United States Court of Appeals for the Second Circuit, June 10, 2005, at 17-25. In any event, German law does not apply. *See* III.2., *infra*.

REASONS FOR DENYING THE PETITION

The Petition should be denied because it does not meet this Court's standards for review.

I. The Court Of Appeals' Decision Does Not Conflict With Any Decisions Of This Court, With The Decision Of Another United States Court Of Appeals Or With A Decision Of A State Court Of Last Resort.

"A principal purpose for which we use our certiorari jurisdiction . . . is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law. See this Court's Rule 10.1." *Braxton v. United States*, 500 U.S. 344, 347, 111 S. Ct. 1854, 1857 (1991). Petitioners point to no conflict between the decision of the court below and any relevant decision of this Court or any other decision of a United States court of appeals or any decision of a state court of last resort, Sup. Ct. R. 10, and there is no such conflict.

II. The Court of Appeals Did Not Decide An Important Question Of Federal Law That Has Not Been, But Should Be, Settled By This Court.

The Court of Appeals decided a straightforward choice of law issue: What laws governed the GSIs' wrongful death and negligence claims? Choice of law issues such as this are routinely decided by the United States courts of appeals.

Petitioners refer to the "importance" of the GSIs' purported right of direct action under German law (Pet. at 5), claiming that the Court of Appeals' decision "places United States law in conflict with the laws . . . of Germany"

and other nations' laws (*id.* at 6), that Germany has a "paramount interest . . . in the instant matter" (*id.* at 11, 12), and that the court below should have applied a contract-based rather than a tort-based choice of law analysis (*id.* at 9, 14). After enumerating the factors they believe the Court of Appeals should have considered in its analysis (*id.* 13-14), Petitioners state that they "strongly disagree" with the Court of Appeals' choice of law analysis. *Id.* at 14. In sum, Petitioners are simply dissatisfied with the result below. Their dissatisfaction, however, is not a sufficient basis for granting their Petition. *Cf.* Sup. Ct. R. 10 ("[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law"). Here, the Court of Appeals applied the choice of law principles set forth in Stabilization Act § 408(b)(2) and reached a result that happens not to be to Petitioners' liking.

While the Court of Appeals' choice of law analysis was routine, its decision relating to the effect of the payments by the VCF to the decedents' personal representatives involved an "unusual question" of law. A. 2a. That question is not likely to arise again. As Petitioners concede, "the VCF process has been concluded". Pet. at 9. Since the Fund has concluded its work and is closed, no further awards based on the deaths of September 11th victims will be made and no future litigation regarding the effect of such awards is likely. In addition, the statutes of limitations for wrongful death and negligence claims for the deaths of September 11th victims have expired. Finally, as Petitioners conceded in their Brief to the Court of Appeals, a decision in the GSIs' favor would not generate many new lawsuits by other social insurers:

> Germany's statutory scheme, moreover, is relatively unique, so that it is unlikely that a ruling in Appellants' favor would generate a material volume of lawsuits, if any, asserted by other social insurers on a worldwide basis.

GSIs' Brief and Special Appendix for Plaintiffs-Appellants, United States Court of Appeals for the Second Circuit, Apr. 15, 2005, at 19. Accordingly, the issue decided by the Court of Appeals is not of such importance as to warrant review by this Court.

III. The Decision Of The Court Of Appeals Is Correct On The Merits

1. In Enacting The Stabilization Act, Congress Intended To Protect Entities With A Property Interest In The World Trade Center From Lawsuits Arising Out Of The Terrorist Attacks Of September 11, 2001.

The November 19, 2001 statutory amendments expressly expanded the categories of persons and entities protected under the Stabilization Act to include those "with a property interest in the World Trade Center, on September 11, 2001, whether fee simple, leasehold or easement, direct or indirect. . . ." Stabilization Act § 408(a)(1). That limitation of liability, coupled with the establishment of the VCF, including the statutory waiver, was intended to protect those with a property interest in the World Trade Center from litigation arising out of the deaths or injuries of September 11th victims. As the Court of Appeals held, once a claim was submitted to the VCF, protected entities were to have "finality of liability exposure". A. 9a ("The VCF thus stands

as a source of compensation for victims and their families that chose to file claims while providing finality of liability exposure to a wide variety of potential litigation targets.") The Court of Appeals' decision in this case is consistent with its other decisions on claims arising out of the terrorist attacks and involving awards by the VCF. *E.g.*, *Virgilio v. City of New York*, 407 F.3d 105, 115 (2d Cir. 2005), *cert. denied*, 126 S. Ct. 1142 (2006) (holding that Stabilization Act balanced interests of victims' families for compensation with protected entities' need for "complete legal peace"; submission of claim to VCF effected election of remedies precluding lawsuits for victims' deaths); Stabilization Act §§ 405(c)(3)(B)(i), 408(a)(1).

2. Under The Stabilization Act, Where German Law Conflicts With Federal Law, Federal Law Prevails.

The decision of the Court of Appeals is correct for the additional reason that under the unambiguous language of the Stabilization Act, German law cannot apply if it conflicts or is inconsistent with federal law.

Petitioners claim that, in the final analysis, to the extent that there is a conflict between German law and the laws of New York and Pennsylvania (the laws selected by the choice of law principles set forth in Stabilization Act § 408(b)(2)) or with the provisions or purposes of the Stabilization Act itself, deference should be given to Germany's purported paramount interest in having its direct action laws applied. Pet. at 16. However, Petitioners ignore the choice of law provision governing their purported federal cause of action:

> The substantive law for decision in any such suit shall be derived from the law, including the choice

> of law principles of the State in which the crash occurred *unless such law is inconsistent with or preempted by Federal law.*

Stabilization Act § 408(b)(2) (emphasis added).

Thus, to the extent that German law conflicts or is inconsistent with federal law, it is federal law, including the Stabilization Act, that prevails. German law cannot override the provisions and undermine the purposes of the Stabilization Act, which protect entities with a property interest in the World Trade Center from all lawsuits arising out of the death of a September 11th victim when the personal representative of that victim applied for and received an award from the VCF.

CONCLUSION

For the reasons stated above, the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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